

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
JEFFREY MOTT AND	:	DETERMINATION
BEATRICE JORGE-MOTT	:	DTA NO. 818315
	:	
for Redetermination of Deficiencies or for Refund of New	:	
York State Personal Income Tax under Article 22 of the	:	
Tax Law for the Years 1995 and 1996.	:	

Petitioners, Jeffrey Mott and Beatrice Jorge-Mott, 35 Beatrice Court, Hempstead, New York 11550, filed a petition for redetermination of deficiencies or for refund of New York State personal income tax under Article 22 of the Tax Law for the years 1995 and 1996.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 175 Fulton Avenue, Hempstead, New York, on July 20, 2001 at 10:00 A.M. Petitioners appeared by John T. Roesch, Esq. The Division of Taxation appeared by Barbara G. Billet, Esq. (Patricia Mudgett).

The parties were allowed time to file briefs in this matter. The final brief was due on November 2, 2001 and it is this date that commences the three-month period for the issuance of this determination.

ISSUE

Whether petitioners presented sufficient evidence to adequately substantiate their claimed itemized deductions for contributions.

FINDINGS OF FACT

1. Petitioners, Jeffrey Mott and Beatrice Jorge-Mott, filed a joint New York State Resident Income Tax Return for the year 1995 whereon they reported New York adjusted gross income of \$109,914.00 and New York itemized deductions totaling \$26,731.00.

2. For 1996, petitioners filed a joint New York State Resident Income Tax Return whereon they reported New York adjusted gross income of \$113,138.00 and New York itemized deductions totaling \$28,372.00.

3. On November 2, 1998, the Division of Taxation ("Division") issued a separate Notice of Deficiency to petitioners for each of the years 1995 and 1996. For 1995, the notice asserted additional New York State personal income tax of \$544.78, plus penalties of \$86.22 and interest of \$117.98, for a total due of \$748.98. For 1996, the notice asserted additional New York State personal income tax of \$633.62, plus penalties of \$71.40 and interest of \$79.45, for a total due of \$784.47. The penalties asserted each year were for negligence pursuant to Tax Law § 685(b)(1) and (2). The deficiencies for both years at issue were the result of the Division's adjustments to petitioners' claimed New York itemized deductions based on documentation submitted. These adjustments are set forth below:

1995

<u>Deduction</u>	<u>Claimed</u>	<u>Allowed</u>	<u>Disallowed</u>
Taxes	\$11,955.00	\$10,557.00	\$1,398.00
Interest	15,529.00	15,529.00	-0-
Contributions	1,793.00	-0-	1,793.00
Miscellaneous deductions	<u>3,962.00</u>	<u>-0-</u>	<u>3,962.00</u>
Subtotal	\$33,239.00	\$26,086.00	<u>\$7,153.00</u>
Less: State & Local income taxes	<u>6,508.00</u>	<u>6,529.00</u>	
Total	<u>\$26,731.00</u>	<u>\$19,557.00</u>	

1996

<u>Deduction</u>	<u>Claimed</u>	<u>Allowed</u>	<u>Disallowed</u>
Taxes	\$12,242.00	\$10,494.00	\$1,748.00
Interest	15,297.00	15,297.00	-0-
Contributions	2,176.00	-0-	2,176.00
Miscellaneous deductions	<u>4,969.00</u>	<u>-0-</u>	<u>4,969.00</u>
Subtotal	\$34,684.00	\$25,791.00	<u>\$8,893.00</u>
Less: State & Local income taxes	<u>6,312.00</u>	<u>6,312.00</u>	
Total	<u>\$28,372.00</u>	<u>\$19,479.00</u>	

4. Petitioners protested both notices of deficiency by filing a Request for Conciliation Conference with the Division's Bureau of Conciliation and Mediation Services. A conciliation conference was held June 6, 2000 and the conferee subsequently issued a Conciliation Order on October 20, 2000 which denied petitioners' request and sustained the two notices of deficiency. The bottom of the Conciliation Order bore the notation "Payments applied to these Notices total \$373.45."

5. On January 16, 2001, petitioners filed a petition for a hearing with the Division of Tax Appeals for the two years at issue wherein they claimed that they incurred itemized deductions for contributions and miscellaneous deductions for which they were not given credit.

6. During the hearing, petitioners conceded the adjustments made by the Division to miscellaneous deductions for both 1995 and 1996. Accordingly, only the deductions claimed for contributions remain at issue.

SUMMARY OF PETITIONERS' POSITION

7. At the hearing petitioner Jeffrey Mott testified that during the years 1995 and 1996, he and his wife regularly attended St. Thomas the Apostle Church in West Hempstead, Long Island, where they were registered parishioners. He alleged that they made cash contributions to the church of \$30.00 per week and gave additional cash gifts at Easter and Christmas.

8. Mr. Mott also testified that he and his wife contributed non-cash items to the Salvation Army during the years at issue. He submitted a typewritten list for each year at issue which listed items purportedly contributed and the value of each item. Each list was prepared by Mrs. Mott. The hearing record is not clear with respect to who placed the monetary valuation on each item and how such valuations were determined. The total non-cash contributions shown on the typewritten lists totaled \$475.00 for 1995 and \$496.00 for 1996.

9. Mr. Mott alleged that he timely “kept a running list” of non-cash contributions made during the years at issue. He contended that no receipts for contributions were available because his wife discarded numerous receipts and various other documents while cleaning their house in 1997 when he was in the Army Reserve serving in Bosnia for an extended period of time.

10. Although petitioners were allowed time subsequent to the hearing held herein to submit documentation from the church respecting contributions made during 1995 and 1996 and Mr. Mott’s “running list” of non-cash contributions made to the Salvation Army, they failed to do so.

CONCLUSIONS OF LAW

A. Since the Division’s adjustments disallowing the amounts claimed for miscellaneous deductions for 1995 and 1996 were conceded by petitioners these adjustments will not be addressed hereinafter.

B. With respect to the claimed deductions for contributions, petitioners failed to sustain their burden of proof (Tax Law § 689[e]) to show that they made any charitable contributions during the years at issue herein. I find petitioner Jeffrey Mott’s testimony regarding alleged cash and non-cash charitable contributions, standing alone, insufficient to adequately and properly substantiate said items. Petitioners were unable to substantiate any of their claimed deductions

for contributions with credible independent documentary evidence. Furthermore, it is noted that petitioners significantly overstated their allowable deductions for taxes and miscellaneous deductions for both years at issue. Given this scenario, I am not inclined to accept Mr. Mott's testimony as adequate proof of cash contributions. The same reasoning applies equally to petitioners' claimed deductions for non-cash contributions. Accordingly, the Division's adjustments disallowing the claimed deductions for contribution for the years 1995 and 1996 are sustained.

C. The petition of Jeffrey Mott and Beatrice Jorge-Mott is denied and the two notices of deficiency dated November 2, 1998 are sustained.

DATED: Troy, New York
January 24, 2002

/s/ James Hoefer
PRESIDING OFFICER